

³ The Board notes that following the April 24, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant abandoned his request for an oral hearing; and (2) whether OWCP abused its discretion by denying authorization for removal of a right femur lesion/bursa.

FACTUAL HISTORY

On August 29, 2013 appellant, then a 48-year-old accounting technician, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2013 he sustained hip, upper chest, upper back, neck, head, and arm injuries when he was struck by a malfunctioning revolving glass door as he entered the employing establishment while in the performance of duty. OWCP accepted the claim for lumbar ligaments sprain; complicated headache syndrome; neck sprain; left wrist sprain; right hip region enthesopathy/traumatic bursitis; face, neck and scalp contusions; concussion without loss of consciousness; and postconcussion syndrome. Appellant stopped work on the date of injury. OWCP paid him intermittent wage-loss compensation on the supplemental rolls for the period October 11 to December 14, 2013.⁴

In a March 28, 2019 report, Dr. Daniel C.H. Tang, a Board-certified orthopedic surgeon, noted appellant's history of injury and medical treatment. He related that physical examination of appellant's right hip revealed normal gait pattern, no range of motion restriction, and trochanteric tenderness. Dr. Tang diagnosed right hip bursitis and recommended cortisone injections. He also related that he had discussed with appellant the possibility of surgical excision of the bursa if the condition became chronic.

On September 23, 2019 OWCP received a request for authorization to remove a right femur lesion/bursa.

In a development letter dated October 7, 2019, OWCP notified appellant that his request for authorization for removal of right femur lesion/bursa could not be approved as it was unclear how the requested right femur lesion/bursa removal was causally related to the accepted conditions. It requested submission of a detailed narrative report from his treating physician explaining how the requested right femur lesion/bursa removal was medically necessary and how it was causally related to the accepted traumatic injury.

In a report dated October 11, 2019, Dr. Tang diagnosed right hip trochanteric bursitis. He related that appellant's physical examination findings included tenderness over the right hip greater trochanter, but that range of motion of the hip was not significantly restricted. X-rays of appellant's right hip did not demonstrate any bony abnormality or degenerative arthritis. Dr. Tang explained that surgery was recommended as cortisone injections had provided temporary relief from the persistent complaints of pain and impairment due to the recalcitrant trochanteric bursitis.

In a report dated October 24, 2019, Dr. Tang diagnosed right hip trochanteric bursitis and provided physical examination findings. On physical examination pain was reproduced in the groin area on internal rotation of the right hip and on palpation, no swelling, ecchymosis or deformity was noted in the hip area, hip strength was full in all muscle groups tested, all sensations

⁴ The employing establishment terminated appellant's two-year probationary appointment effective April 4, 2014.

and reflexes intact, and all special hip tests revealed normal findings. Antalgic gait favoring the affected side was noted.

By decision dated December 18, 2019, OWCP denied appellant's request for authorization to remove right femur lesion/bursa. It found Dr. Tang failed to explain how the surgery was medically related to or necessary due to the accepted August 26, 2013 employment injury.

On December 24, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 9, 2020 letter, OWCP's hearing representative informed him that a telephonic hearing would take place on April 8, 2020 at 9:45 a.m., Eastern Standard Time (EST). OWCP's hearing representative provided a toll-free telephone number and passcode to access the hearing by telephone. She mailed the letter to appellant's last known address of record.

In an undated response, received by OWCP on March 16, 2020, appellant noted that he preferred an in-person oral hearing, rather than a telephonic hearing. He further noted that he had additional evidence to support his claim and asked if it would be allowed beforehand. Appellant specifically requested that OWCP change the date of the hearing.

Appellant did not appear for the scheduled telephonic hearing.

By decision dated April 24, 2020, OWCP found that appellant had abandoned his request for an oral hearing. It indicated that he had failed to appear for the hearing scheduled for April 10, 2020 and failed to contact OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.⁵ Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.⁶ The hearing representative retains complete discretion to set the time, place, and method of the hearing.⁷ OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.⁸

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.

⁵ 20 C.F.R. § 10.616(a).

⁶ *Id.* at § 10.617(b).

⁷ *Id.* at § 10.617(a).

⁸ *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.⁹

ANALYSIS -- ISSUE 1

OWCP found in its April 24, 2020 decision that there was no indication in the record that appellant had contacted it either prior to or subsequent to the April 8, 2020 scheduled hearing to explain his failure to appear. However, in an undated response to OWCP's March 9, 2020 hearing request, received by OWCP on March 16, 2020, appellant specifically requested that the hearing be rescheduled. OWCP, however, proceeded to hold the hearing telephonically on April 8, 2020.

As the circumstances of this case do not meet the criteria for abandonment as provided in Chapter 2.1601.6(g) of OWCP's procedures, the Board therefore finds that appellant did not abandon his request for an oral hearing.¹⁰

CONCLUSION

The Board finds that OWCP improperly determined that appellant abandoned his request for an oral hearing.¹¹

⁹ 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); A.J., Docket No. 18-0830 (issued January 10, 2019).

¹⁰ *Order Reversing Case, R.P.*, 20-0207 (issued April 16, 2021).

¹¹ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2020 decision of the Office of Workers' Compensation Programs is reversed. The December 18, 2019 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: May 25, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board